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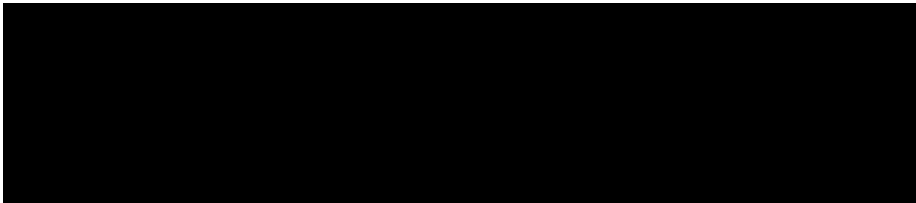
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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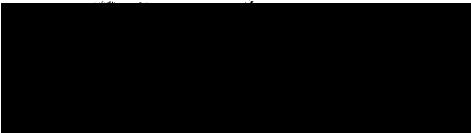


FILE: EAC 02 120 51858 Office: VERMONT SERVICE CENTER Date: **JAN 21 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to
Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, an educational institution, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as an Assistant Professor. The director found that the petitioner has not established that the beneficiary is recognized internationally as outstanding in his academic field.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if-

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area,
and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.” The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner submits evidence pertaining to the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The petitioner submitted a certificate of appreciation from Clemson University for “excellence in the teaching of undergraduate students.” We note here that the beneficiary was pursuing his doctorate at Clemson at that time and was recognized for his efforts as a “Teaching Assistant.” Dr. John Warner, Professor of Economics, Clemson University, states: “Clemson’s Outstanding Graduate Teaching Assistant Award is given annually to one recipient based on a campus-wide competition. Each department that has graduate students involved in running labs or in actual classroom instruction may nominate a graduate student for this award.”

The Outstanding Graduate Teaching Award from Clemson is reflective of recognition at the local or institutional, rather than the international, level. Based on the documentation presented, it is clear that the competition for the award was limited to Clemson’s graduate students from the 1994-95 academic year. Such an award may place the beneficiary among the top graduate students at his particular university, but it offers no meaningful comparison between the beneficiary and more experienced professors who had long since completed their Ph.D. studies.

Michael Malone, Professor Emeritus, Washington College, “competed a two-year contract as Head of the Department of Economics and Finance at Sultan Qaboos University in Oman” in 1998. He states: “At Sultan Qaboos University [the beneficiary’s] student evaluations showed him to be the best teacher in the Department of Economics and Finance.” The record, however, contains no first-hand evidence of a “prize or award” resulting from the favorable student evaluations. In a letter accompanying the appeal, [REDACTED] Assistant Professor of Accounting, Gannon University, states that the Iota Epsilon Chapter of Delta Mu Delta, Gannon University’s honorary business fraternity, awarded the beneficiary an honorary membership in 2003. This award came into existence subsequent to the petition’s filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

The above evidence, indicating that the beneficiary received recognition from his educational institutions, does not satisfy the restrictive nature of this criterion. This criterion requires documentation establishing that the beneficiary’s awards enjoy significant international stature. Documentation showing that the beneficiary

was locally recognized for his teaching efforts does not constitute receipt of a major prize or award for outstanding achievement in the academic field at the international level.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

The petitioner submitted witness letters from individuals who all have direct ties to the beneficiary. In order to qualify for the classification sought, however, the petitioner must demonstrate that the beneficiary is recognized not only by his direct acquaintances, but also among financial and economic scholars throughout international community.

Dr. John Warner, Professor of Economics, Clemson University, states that he served on the beneficiary's Ph.D. thesis committee at Clemson and taught three of his graduate-level courses. Dr. Warner further states:

I was also instrumental in helping [the beneficiary] gain employment at SAG Corporation in Annandale, Virginia and am familiar with his record of accomplishment there.

[The beneficiary] is a well-trained and highly motivated economist who has already assembled an excellent record of research and publication in the fields of Economics and Finance. In addition to three refereed publications in these areas, he has a number of working papers in the pipeline. During his stay at SAG Corporation, [the beneficiary] worked on several projects of great importance to manpower planners in the U.S. Department of Defense. I know from conversations with his supervisors that they were extremely pleased with his work.

Dr. Gerald Dwyer states that he left Clemson University to assume the position of Vice President in charge of the Finance Group in the Research Department of the Federal Reserve Bank of Atlanta. He further states:

I have known [the beneficiary] since he took courses from me while he was a graduate student in Economics at Clemson University and I was a Professor of Economics at that institution.

* * *

[The beneficiary's] research has contributed to the field of economics and even to the defense readiness of the United States. I was a reader of [the beneficiary's] dissertation and found the work carefully done and the results informative.... [The beneficiary] published a paper based on his dissertation in *Economic Letters*, a well recognized professional journal. While employed at SAG Corporation, [the beneficiary] participated in economic research for the United States military. While others are more familiar with the content of that research, my familiarity with [the beneficiary] makes me confident that the research was carefully done and well thought out.

[The beneficiary] has published research other than his dissertation and is quite capable of continuing to do so. While he may continue to do some research, I expect him to emphasize teaching more than research...

Dr. Myles Wallace, Professor of Economics, Clemson University, states: "[The beneficiary] wrote both his Masters thesis and Ph.D. dissertation under my direction." Dr. Wallace further states:

[The beneficiary] is more than just an outstanding teacher. He is also an outstanding researcher. His work on exchange rate volatility was published in a major journal, *Economics Letters*, and he has other publications in top quality journals. I am especially impressed by the breadth of work currently in progress. [The beneficiary] has a number of working papers on defense related issues. These papers are a result of

his past employment and ongoing association with SAG Corporation which specializes in conducting research [for the] U.S. Navy and Department of Defense. In addition, he has found time to research various issues relating to developing nations including a paper prepared for the Asian Development Bank on the effects of the Uruguay Round on the economy of Bangladesh.

Dr. Patrick Mackin, Director and Senior Economist, SAG Corporation, was the beneficiary's supervisor from 1999 to 2001. Dr. Mackin states:

At SAG Corporation, [the beneficiary] was directly involved in innovative research into the behavioral factors affecting personnel supply and demand. [The beneficiary] was one of the first researchers to investigate the applicability of data-mining techniques to predicting personnel behavior.

[The petitioner's] work while at SAG included co-authorship of a study of retention behavior of Navy Surface Warfare Officers. This study was presented to the Western Economic Association in July 2001. Additionally, [the petitioner] explored alternative measures of housing costs for the Office of the Secretary of Defense. His work included estimation of relationships that will allow OSD to calculate levels of "comparable" housing in order to set appropriate compensation levels.

Several of the individuals offering letters of support mention the beneficiary's authorship of conference papers and journal publications. The beneficiary's co-authorship of these papers may demonstrate that his research efforts yielded some useful and valid results; however, it is apparent that any research paper, in order to be accepted in a journal for publication, or for presentation at an economic conference, must offer new and useful information to the pool of knowledge. It does not follow that every scholar whose research is accepted for publication has made a contribution of international significance. In this case, the record contains no evidence showing that the presentation or publication of one's work is a rarity in beneficiary's academic field, nor does the record sufficiently demonstrate that other scholars have heavily cited or often relied upon the petitioner's work in their own research. The petitioner's authorship of scholarly articles will be further addressed under a separate criterion.

Steven Cylke, Director of Navy Personnel Research and Analysis, states that he worked closely with the beneficiary on personnel research projects for the U.S. Navy. He further states:

[The petitioner] has developed a statistical model to estimate the retention behavior of Navy officer personnel. Given the importance of personnel to Navy readiness, this research has served an extremely valuable function and will continue to do so in the future. His analytical and quantitative skills have also been essential in a number of other areas relating to military personnel, including reenlistment bonuses, cost-of-living allowances, DOD housing, the G.I. Bill, and analysis of Nuclear Officer careers. [The beneficiary] not only performed the research on these issues, but also provided written papers to inform Navy leadership of the implications of the results. His work has commanded the highest regard from his clients in the U.S. Navy...

The letters presented describe the beneficiary's past projects, teaching ability, and research expertise, but they provide little or no information regarding how his contributions have influenced the academic field at the international level. The issue here is not the dedication, skill level, or experience of the beneficiary, but, rather, whether any of his past research accomplishments would qualify as an internationally recognized contribution to his academic field.

On appeal, the petitioner provides letters from Michael Malone and Steven Cylke reaffirming their support for the beneficiary. The petitioner, however, has not provided evidence that the beneficiary's research, to date, has

attracted significant attention from independent researchers on an international scale. An individual that is recognized internationally as outstanding should be able to produce ample unsolicited materials reflecting such a reputation. If the beneficiary's scholarly achievements are not widely praised outside of individuals with whom he has previously studied, collaborated, or worked, then it cannot be concluded that he enjoys an international reputation. In this case, the beneficiary has not demonstrated any specific economic or scholarly contributions that have been unusually influential or renowned within his field. While the witnesses have asserted in general terms that the beneficiary is "an outstanding teacher" and "an outstanding researcher" he appears to have earned a reputation only among his personal acquaintances. The absence of substantial independent testimony raises doubt as to the extent of the petitioner's recognition.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner submitted evidence of the beneficiary's co-authorship of three articles published in *Economics Letters*, *Journal of Applied Business Research*, and the *Midwest Review of Finance and Insurance*.

Dr. Dennis Olson, Head of the Department of Economics and Finance, Sultan Qaboos University, states: "[The beneficiary] has done some good research, as evidenced by [his] papers... This activity shows that he is committed to doing research and therefore I expect that he will meet the research expectations at your university.... [The beneficiary's] research record is good, but his primary strength is in teaching."

The director's decision indicates that the very existence of published work by the beneficiary is not dispositive. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS' position that publication of scholarly articles is not automatic evidence of international recognition; we must also consider the academic field's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. This position is supported by an assertion from Dr. Timothy Downs, Dean of Gannon University, who states: "The citation of a researcher's work in a scholarly journal further verifies that [one's] research is internationally recognized by international scholars in business."

Publication may serve as evidence of originality, but it does not compel others to read an article or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing the academic field's reaction to the beneficiary's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the beneficiary himself has referenced numerous sources in his own articles. This is a universally accepted practice among academic scholars and researchers. Numerous independent citations would provide firm evidence that other economic researchers have been influenced by the beneficiary's work. Their citation of his published articles would demonstrate their familiarity with his work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the international research community, then it is reasonable to question how widely that alien's work is viewed as being outstanding. It is

also reasonable to question how much impact - and international recognition - a researcher's work would have, if that research does not influence the direction of future research.

The petitioner submitted evidence showing that his paper published in *Economics Letters* was cited once. In this case, the limited number of independent citations shown to have existed as of the filing date of the petition (one over a research career spanning almost a decade) would not elevate the beneficiary to a level of international recognition as an outstanding professor or researcher.

Beyond the beneficiary's failure to satisfy at least two of the regulatory criteria 8 C.F.R. § 204.5(i)(3)(i), we note that the record contains no formal job offer letter, i.e., a letter from the petitioner addressed to the beneficiary that sets forth a binding offer of employment, including the specific terms thereof. The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by "[a]n offer of employment from a prospective United States employer" and that "[t]he offer of employment shall be in the form of a letter from a United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field." In a letter accompanying the petition, counsel states: "As evidenced by Form I-140 Gannon University is offering the petitioner an tenure-track teaching position in the Department of Economics and Finance." Additional letters offered in support of the petition indicate that the beneficiary is employed by Gannon University, but none of these letters constitute an offer of employment addressed to the beneficiary. Rather, they imply that the beneficiary has already accepted an offer made earlier. The record does not contain any documentation, pre-dating the petition's filing date, that initiated an employer-employee relationship between the petitioner and the beneficiary or otherwise extended a job offer from the petitioner to the beneficiary.

On appeal, counsel for the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, counsel has not offered sufficient justification as to why the issues to be presented on appeal cannot be addressed in writing; counsel simply expresses the petitioner's desire to present its case before the AAO. Consequently, the request for oral argument is denied.

Counsel argues that the director "ignored the clear objective standards set forth in the regulations." Counsel states:

In [the] denial of this petition the [director] conceded that evidence had been submitted to establish to meet [sic] the criteria set forth in the regulations. The [director] in a process of creative interpretation discounts the objective criteria set forth at 8 C.F.R. § 204.5(i)(3)... The [director]... contends that there is a separate criterion that the beneficiary be internationally recognized as outstanding in [his] field. This is a critical error. The regulations clearly state that a beneficiary can establish outstanding ability by meeting a minimum of two out of six criteria. If the beneficiary is allowed to do so, then [he has] established [his] outstanding ability.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) specifically states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." As stated previously, the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to satisfy the underlying criteria must be examined in the context of international recognition. Contrary to counsel's first statement in the above paragraph, the director's decision offers no conclusions regarding the specific regulatory criteria under which the

beneficiary qualifies at 8 C.F.R. § 204.5(i)(3)(i). Rather, it appears that the director was using a hypothetical example to emphasize that a petitioner may submit evidence under a particular criterion, but that qualifying evidence under that criterion must be to some extent indicative of international recognition.

In the disputed portion of the decision, the director stated:

It is not our view that meeting two out of the six criteria always establishes that a beneficiary is internationally recognized as outstanding in his field. For example, a beneficiary could arguably meet two of those criteria by publishing two articles 10 years ago and by sitting on a panel just one time 10 years ago judging doctoral theses. The list of individuals who can satisfy two of the criteria, is very long, in our judgement, but not everyone who simply satisfies two of the six criteria is internationally recognized as outstanding in his or her field.

We withdraw the above passage from the director's decision. We agree with counsel that the regulations state that an alien can establish eligibility under this classification by meeting a minimum of two out of six criteria. While the wording of the director's decision could certainly be improved, we find that it is by no means so flawed as to undermine the grounds for denial. CIS notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the power of CIS (legacy INS) to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Comm'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F.2d 231 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926 (1961).

Here, the director erred in explaining the distinction that exists between "submitting" evidence under a particular criterion and actually "satisfying" that criterion in a manner consistent with the regulations. That said, we find no error in the director's statement that the evidence presented must be evaluated in terms of whether it establishes that the beneficiary is recognized internationally as outstanding in his academic field. Pursuant to the statute and regulations, any evidence presented under this classification must be evaluated in the context of international recognition; it is not simply a matter of accepting that a piece of evidence presented under a particular criterion automatically satisfies that criterion. The petitioner in this case has submitted evidence under three of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i); however, based on the preceding discussion of the evidence, we find that none of those criteria have been fulfilled.

In this matter, the petitioner has shown that the beneficiary is a talented teacher, who has won the respect of individuals from the institutions where he has studied and worked, while possibly securing some minimal degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.